Supreme Court, U. S.
FILED
OCT 31 1978
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1978

No. 78-426

ANGELO GARZIA and JOANNE CONNOLLY GARZIA,

Petitioners,

- against -

THE PEOPLE OF THE STATE OF NEW YORK,

Respondents.

PETITIONERS' BRIEF IN REPLY

RICHARD S. SCANLAN
Attorney for Petitioners
199 Main Street
White Plains, N. Y. 10601
(914) 949-2560

TABLE OF CONTENTS

	Page
TIMELINESS	2
FINALITY	4

TABLE OF AUTHORITIES

	Page
Cases	
Coclin Tobacco Co. v. Griswald, 408 F.2d 1338 (1st Cir. 1969), cert. den. 396 U.S. 940, 24 L.Ed.2d 241, 90 S.Ct. 373	3
Hastings v. Twenty-Third Ward Land Improvement Co., 46 App. Div. 609, 61 N.Y. Supp. 998 (1st Dept. 1900)	3
Knapp v. Roche, 82 N.Y. 366 (1880)	3
Litchfield Construction Co. v. The City of New York, 219 A.D. 369, 220 N.Y. Supp. 6 (1st Dept. 1927)	3
Statutes	
New York Criminal Procedure Law §450.50[1]	4
New York Criminal Procedure Law §450.50[2]	5
Texts	
Justinian's Institutes, liber 1, title 2, Section 56 (Black's Law Dictionary, 4th Ed. West Pub. Co. 1951, p. 1004)	6

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1978

No. 78-426

ANGELO GARZIA and JOANNE CONNOLLY GARZIA,

Petitioners,

- against -

THE PEOPLE OF THE STATE OF NEW YORK,

Respondents.

PETITIONERS' BRIEF IN REPLY

TIMELINESS

Respondent's attorney would have suitor's to the court guessing the prosecutor's private "finality" date rather than the date of entry which the official public libers indicate and upon which the public relies in each of the 62 counties in New York.

It is established law in New York that a judgment or order is not final or effective until entered Knapp v. Roche, 82 N.Y. 366 (1880); Hastings v. Twenty-Third Ward Land Improvement Co., 46 App. Div. 609, 61 N.Y. Supp. 998 (1st Dept. 1900); Coclin Tobacco Co. v. Griswald, 408 F.2d 1338 (1st Cir. 1969), cert. den. 396 U.S. 940, 24 L.Ed.2d 241, 90 S.Ct. 373.

This rule is applicable as well to orders or judgments of an appellate court upon remittitur. Litchfield Construction Co. v. The City of New York, 219 A.D. 369, 220 N.Y. Supp. 6 (1st Dept. 1927).

The true copy of the Court of Appeals "Memorandum", "Decided May 31, 1978", bears the following notation at the beginning thereof:

> "This memorandum is uncorrected and subject to revision before publication in the New York Reports".

It was a copy of this memorandum which the Court of Appeals sent to the writer of this brief, and it was a copy of it which the Court of Appeals sent or remitted to the Westchester County Clerk along with the "Original" Record on Appeal for entry in Liber 114.

FINALITY

Respondent has now shifted to an inconsistent position. On January 14, 1976 it filed an affidavit pursuant to the New York Criminal Procedure Law §450.50[1] representing to the Appellate Division that Judge Martin's suppression of evidence rendered the People's case "so weak in its entirety that any reasonable possibility of prosecuting such charge to a conviction has been effectively destroyed".

The illegality of the seizure is res judicata in New York. Therefore, if

Petitioners were to now plea guilty or be found guilty after trial and judgment of conviction entered, they would be put through the time consuming and costly appellate route once again, this time with a larger and more costly record, only to find that an affirmance of conviction by the Appellate Division is not reviewable by the Court of Appeals as a matter of right and, moreover, the issue of illegality of search and seizure is barred because it has already been litigated.

The New York Legislature enacted Criminal Procedure Law §450.50[2] so that the "order suppressing evidence constitutes a bar to the prosecution of the accusatory instrument" and thus treats the order as a final judgment.

Petitioners are entitled to have the 1975 accusatory instrument and attending

issues resolved quickly because justice delayed is justice denied. Justinian's Institutes, liber 1, title 2, Section 56 (Black's Law Dictionary, 4th Ed. West Pub. Co. 1951, p. 1004). The delay has been occasioned because the People resorted to this appellate process, not the Petitioners.

Dated: White Plains, New York
October 17, 1978

Respectfully submitted,

RICHARD S. SCANLAN
Attorney for Petitioners
199 Main Street
White Plains, New York
10601
Tel. (914) 949-2560